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No. 07-228

FILED

OCT 2 6 2007

OFFICE OF THE CLERK
SUPREME COURT, U.S.

In the

SUPREME COURT OF THE UNITED STATES

October Term 2007

ELENA RUTH SASSOWER,

Petitioner,

- against -

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

PETITION FOR REHEARING

ELENA RUTH SASSOWER
Petitioner, *Pro Se*
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PETITION FOR REHEARING

I

The Official Misconduct of the Court's Clerk & His Staff Warranting Recall/Vacatur

This petition for rehearing of the Court's October 1, 2007 order denying the petition for a writ of certiorari [RA-1] is necessitated by the official misconduct of the Court's Clerk and his staff. In wilful violation of this Court's rules, they have refused to file and transmit to Chief Justice Roberts, as Circuit Justice for the District of Columbia, and, upon his determination, to the Court, two motions dispositive of the Court's mandatory supervisory and ethical duties with respect to the cert petition.

These two dispositive motions, each pursuant to this Court's Rule 22.1 and further invoking Rule 21, are:

> (1) petitioner's September 17, 2007 motion [RA-2] to compel the United States Solicitor General to file the Government's response to her cert petition; and
>
> (2) petitioner's two-branch October 9, 2007 motion [RA-24] for: (a) clarification of the Chief Justice's April 26, 2007 opinion in *Boumediene, et al. v. George W. Bush, et al.*, 127 S.Ct. 1725, which the Clerk's Office represented would be the basis for its rejecting petitioner's motion for an extension of time to file a petition for rehearing; and (b) recall/vacatur of the Court's October 1, 2007

order and adjudication of petitioner's September 17, 2007 motion.

The Clerk's Office has further concealed the very existence of these motions by wilfully failing to record their receipt and disposition on its computerized docket of the case [RA-45][1], thereby creating a false case history.

The Clerk has additionally prevented the Chief Justice from administratively addressing his misconduct by apparently not transmitting to the Chief Justice, as petitioner requested [RA-53], her separate October 9, 2007 letter-complaint [RA-55] and its supporting proof, *to wit*, her unfiled and undocketed October 9, 2007 motion – and its physically annexed unfiled and undocketed September 17, 2007 motion.

The Clerk and his staff have refused to respond to petitioner's telephone inquiries as to the status of her October 9, 2007 motion and its accompanying alternative letter-complaint to the Chief Justice. Nor have they sent her any written communication about them [RA-60].[2] Petitioner has, therefore, been burdened with perfecting this petition for rehearing so as not to forfeit her rights.

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[1] There has been no change in the docket since the Court's October 1, 2007 order.

[2] Presumably the original and 10 copies of the October 9, 2007 motion, delivered by the U.S. postal service to the Court on October 10, 2007 and which the Court's Office of Legal Counsel thereafter stated to petitioner were being "processed" by the Clerk's Office [RA-63], are somewhere in the Clerk's Office or the courthouse.

According to the Court's Office of Legal Counsel, the Court has "no formal procedures" for complaints against the Clerk and his staff. However, it has informed petitioner that she could send a complaint directly to the Chief Justice at the courthouse. She has done this [RA-57], simultaneous with her filing of this rehearing petition.

Canon 3B(2) of the Code of Conduct for United States Judges – to which this Court's Justices look for guidance[3] and which binds all other federal judges – states:

> "A judge should require court officials, staff, and others subject to the judge's direction and control, to observe the same standards of fidelity and diligence applicable to the judge."[4]

Pursuant to Rule 28 U.S.C. §671(a):

> "The clerk shall be subject to removal by the Court. Deputy clerks shall be subject to removal by the clerk with the

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[3] Report of the National Commission on Judicial Discipline and Removal, p. 122 (1993).

[4] Similarly, Canon 3C(2) of the American Bar Association's Model Code of Judicial Conduct states:

> "A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties."

Such Canon has been adopted and replicated in rules binding state and District of Columbia judges.

> approval of the Court or the Chief Justice of the United States".

The Chief Justice's administrative determination of petitioner's complaint against the Clerk and his staff, including whether its disposition should be by the Court, takes precedence over the Court's vote on this rehearing petition since a finding that petitioner's September 17, 2007 motion [RA-2] complied with the Court's rules, entitling her to its filing and transmittal to the Chief Justice prior to entry of the Court's October 1, 2007 order denying her cert petition [RA-1], would warrant recall/vacatur of the order. Such would moot this rehearing petition.

Reinforcing the appropriateness of recall/vacatur of the October 1, 2007 order – whether by the Chief Justice or the Court – is that the Clerk's misconduct was not "harmless". Petitioner's September 17, 2007 motion entitled her to the relief sought: a "request", if not order, for the Solicitor General's response to the cert petition. This, by its showing that the Court cannot accept the Solicitor General's waiver of the Government's response to the cert petition [RA-14] as it violates his mandatory obligations under ethical rules of professional responsibility, as well as his duty before the Court – unaccompanied, as it is, by any notification that he is bringing the fact-specific, documentary evidence of judicial and prosecutorial corruption that is the subject of the cert petition [RA-15-23] to the attention of disciplinary and criminal authorities, or by any statement affirmatively endorsing the Court's granting of cert.

The September 17, 2007 motion highlighted the importance the Court attaches to the Solicitor

General's views by citing the Chief Justice's own article, "*Riding the Coattails of the Solicitor General*", (Legal Times, March 29, 1993) [RA-9]. It argued that the Solicitor General's response to the cert petition is threshold to the Court's proper consideration of the petition – especially to recognition of its own mandatory obligations embodied in the petition's fourth and culminating "Question Presented" [RA-15-17]:

> "4. Does this Court recognize supervisory and ethical duties when a Petition for a Writ of Certiorari presents readily-verifiable 'reliable evidence' of judicial misconduct and corruption?
>
> (1) to make referrals to disciplinary and criminal authorities
>
> (2) to adjudicate the appellate issues, subverted by the underlying judicial misconduct and corruption, where those issues are of constitutional magnitude and public importance..."

As for petitioner's October 9, 2007 motion [RA-24], it detailed the Clerk's misconduct in connection with her September 17, 2007 motion, showing that the Clerk's Office had no legal basis for rejecting the motion [RA-38] and that the Clerk had refused to respond to petitioner's September 21, 2007 letter on the subject [RA-46], whose serious and substantial questions included whether other petitioners in criminal cases had their motions to compel the Solicitor General's response similarly rejected [RA-50]. The motion closed as follows:

"the possibility that the Clerk's Office is functioning in this case – and in other criminal cases – to 'protect' the Government from accountability by blocking the Court from deciding motions to compel the Government's response frustrates the Justices from appropriate consideration of cases such as this where the criminal justice system has been hijacked for the ulterior political and personal purposes which [the cert] petition reflects.

32. Criminal defendants who make the long, arduous, and expensive journey to this Court in vindication of their lives, liberty, and property must not be denied the Government's response to particularized charges of collusive conduct between judges and prosecutors, as here at issue. Compelling such responses would assist the Court so that, even in denying cert review, it may advance justice by discharging its supervisory and ethical duties to refer 'reliable evidence' of judicial and prosecutorial corruption and misconduct to disciplinary and criminal authorities, as Canon 3B(3) of the Code of Conduct for United States Judges requires.

33. Examination of [petitioner's] September 17, 2007 motion – and [the] cert petition on which it is based – shows they are dispositive of the Court's supervisory and ethical duties both as to the motion and the petition." [RA-41].

II

Upholding Judicial Independence & its Meaning for The First Amendment and The Rule of Law

On September 19, 2007 – the very day the Clerk's Office was returning to petitioner her September 17, 2007 motion [RA-52] – Chief Justice Roberts was speaking at Syracuse University. The occasion was the dedication of a new building at its communications school, the façade of which is wrapped in the 45 words of the First Amendment. Much of the Chief Justice's speech focused on the importance of an independent judiciary, without which the First Amendment cannot "ensure[] that the voice of the real non-conformist, the upstart, the underdog, the unfashionable can also be heard":

> "'Do not think for a moment that those words alone will protect you... Without an independent judiciary to give substance to the constitutional text as law, the words are nothing but empty promises. Our Framers understood that constitutional guarantees amount to little without courts with the power to interpret them fairly and impartially...free from political pressure and outside influence."[5]

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[5] The Chief Justice's September 19, 2007 speech was broadcast nationally on October 20, 2007 by c-span's "America & the Courts" program and is accessible from its website, www.c-span.org.

This case bears out the Chief Justice's words. At bar, political speech that is at the very heart of the First Amendment – a citizen's respectful request to testify in opposition to a federal judicial nominee at his public Senate Judiciary Committee confirmation hearing – was held to be "disruption of Congress" by courts dependent on Congress and so compromised by that dependency and other conflicting interests that they utterly trashed the rule of law.

The entirety of the 36-page petition for a writ of certiorari was devoted to showing how the District of Columbia judiciary – both its Court of Appeals and trial level Superior Court judges – corrupted the judicial process to "protect" Congress and others. This, by wilfully and deliberately failing to confront their disqualifying relationships, interests, and demonstrated actual bias, which petitioner had set forth again and again in disqualification/disclosure motions, whose very existence and content the judges concealed and falsified in orders and decisions so factually and legally baseless as to be unconstitutional under the Due Process Clause, *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960) – each one reinforcing the "impossibility of fair judgment" standard for disqualification for pervasive actual bias, articulated by this Court in *Liteky v. United States*, 510 U.S. 540 (1994). Culminating this abomination: the D.C. Court of Appeals' Memorandum Opinion and Judgment [A-13].

The fraudulence of that Memorandum Opinion and Judgment is detailed by petitioner's petition to the D.C. Court of Appeals for rehearing and rehearing *en*

banc, joined with a motion to vacate it for fraud and lack of jurisdiction, and for disqualification, disclosure, and transfer [A-297-310]. Such highlighted that the Memorandum Opinion and Judgment, after concealing, without adjudication, petitioner's motion to disqualify the appellate panel and D.C. Court of Appeals [A-282-296], not only covered up the pervasive actual bias of the D.C. Superior Court trial judge, none of whose rulings it examined [A-14-16], but falsified the "disruption of Congress" incident [A-14] – *as verifiable from the videotape and transcript of the Senate Judiciary Committee hearing* [A-178-182][6] – and falsified petitioner's First Amendment challenge to the constitutionality of the disruption of Congress statute [A-17-18] – *as verifiable from her appeal brief* [A-240-251]. This, to uphold a conviction and statute that would otherwise have had to be overturned on First Amendment grounds.

Nor was petitioner's challenge to the disruption of Congress statute, *as written and as applied* [A-240-251], her only First Amendment issue before the D.C. Court of Appeals. She had also challenged, including on First Amendment grounds, the trial judge's probation terms for suspending execution of the 92-day jail sentence he had imposed [A-252-256][7].

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6 "Petitioner sought to lodge a copy of the videotape with the Clerk's Office in support of [her] petition [for a writ of certiorari], but was told that such would be accepted only if the Court requests same..." [footnote 3 of cert petition]. Petitioner asks that the Court request the videotape or, at very least, that the Court request the Solicitor General's response to her analysis of it and the transcript [A-179-182].

7 Likewise, the First Amendment was focal in the *amicus*

Among these probation terms:

> (1) that she write letters of apology to the Senators and federal judicial nominee, expressing remorse for "any inconvenience" caused by her "disruption of Congress" [A-200-201];
>
> (2) that she have "no verbal, written, telephonic, electronic, physical, or other contact" with those Senators and their staff (albeit some relaxation of the ban with respect to her home-state Senators – Senator Hillary Rodham Clinton and Charles Schumer) [A-200];
>
> (3) that she "stay-away" from the entire Capitol complex of all Capitol buildings and grounds [A-199-200]; and
>
> (4) that she submit to the trial judge daily time records, accurate to 1/10-hour increments, of her work as coordinator of the Center for Judicial Accountability, Inc. (CJA) [A-198].

As chronicled by the cert petition [pp. 14-20], the trial judge vindictively retaliated against petitioner

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curiae brief of Professor Andrew Horwitz, an expert on the judicial use and abuse of probation conditions in criminal sentencing and author of "*Coercion, Pop-Psychology and Judicial Moralizing: Some Proposals for Curbing Judicial Abuse of Probation Conditions*", 57 Washington & Lee Law Review 75 (2000), which he filed in the D.C. Court of Appeals in support of petitioner's consolidated appeals.

for exercising her right to decline his probation terms by immediately doubling the 92-day jail sentence to six months and incarcerating her "forthwith" [A-201-203]. The D.C. Court of Appeals then evaded petitioner's constitutional challenge to the probation terms and six-month sentence. It kept her jailed for six-months without addressing any of the facts, law, and legal argument she had presented in motions for release pending appeal, including a motion and expedited appeal to prevent mootness of that appellate issue. Its Memorandum Opinion and Judgment then baldly purported that since she had served her six-month sentence, the appellate issue was moot [A-18].

It may never be known whether the Chief Justice's September 19, 2007 speech, linking judicial independence with the vitality of the First Amendment and the rule of law, was influenced by this case, whose cert petition was distributed to the Justices on August 29, 2007 [RA-45] – and which had been the subject of two prior successful motions to the Chief Justice, as Circuit Justice, annexing the petition for rehearing and rehearing *en banc* and a draft of the cert petition. One thing is certain, however. The cert petition's chronicling of self-interested, pervasively biased and corrupt judicial conduct by two levels of the D.C. judiciary offers a decisive gauge of the Chief Justice's true commitment, and that of the Associate Justices, to judicial independence, the First Amendment, and the rule of law.

On rehearing, that commitment must be manifested by the Court's discharge of its supervisory and ethical duties by the granting of certiorari and

referrals of the D.C. judges and collusive federal prosecutors to disciplinary and criminal authorities. Only this will show that the Court will keep the judiciary's own house in order, without interference of the other governmental branches – a prerequisite for judicial independence.

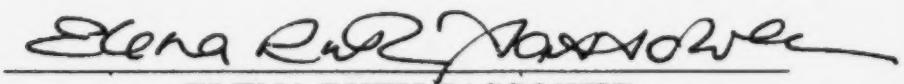
CONCLUSION

Both sections of this petition for rehearing are about self-policing. The first section: the Court's policing of its own Clerk and his staff, operating in wilful and deliberate disregard of published Court rules and basic standards of professionalism. The second section: the Court's policing of the District of Columbia's highest court, whose wilful and deliberate violations of constitutional, legal, and ethical standards are so total as to compel this Court's appellate and supervisory jurisdiction to restore some semblance of the rule of law to that court – and to the comparably lawless D.C. Superior Court.

Neither relief is discretionary.

CERTIFICATE OF GOOD FAITH

I, ELENA RUTH SASSOWER, am the petitioner *pro se* herein and have written the foregoing petition for rehearing, which I do hereby affirm and declare conforms with the requirements of this Court's Rule 44.2 in that it is "limited to intervening circumstances of a substantial and controlling effect" and "presented in good faith and not for delay".



ELENA RUTH SASSOWER

Dated: October 26, 2007
White Plains, New York

Exhibit 1-a to petitioner's October 9, 2007 motion to compel Solicitor General's response

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

October 1, 2007

Ms. Elena Ruth Sassower
16 Lake Street
Apartment 2C
White Plains, NY 10603

Re: Elena Ruth Sassower
v. United States
No. 07-228

Dear Ms. Sassower:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,
s/
William K. Suter, Clerk

Petitioner's September 17, 2007 motion to compel Solicitor General's response

No. 07-228

IN THE SUPREME COURT
OF THE UNITED STATES
October Term 2006

ELENA RUTH SASSOWER,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

MOTION TO "REQUEST", IF NOT ORDER,
THE UNITED STATES SOLICITOR GENERAL
TO FILE THE GOVERNMENT'S RESPONSE
TO PETITION FOR A WRIT OF CERTIORARI

To the Honorable John G. Roberts, Jr., Chief Justice of the Supreme Court of the United States and Circuit Justice for the District of Columbia:

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

1. I am the innocent petitioner *pro se* in the "disruption of Congress" case herein in which the

Government is a party, represented before this Court by the United States Solicitor General, substituting for the United States Attorney for the District of Columbia.

2. I bring this motion to request that the Chief Justice, as the Circuit Justice for the District of Columbia, "request" the Solicitor General to file the Government's response to my Petition for a Writ of Certiorari to the District of Columbia Court of Appeals, or, alternatively, that the Chief Justice present this motion to the Associate Justices for their consideration as to whether, individually or collectively, the Court must request the Solicitor General to file the Government's response to my Petition.[1] Pursuant to this Court's Rule 15.1, it appears that such "request" may take the form of an order, thereby mandating the Solicitor General's compliance.

3. My Petition for a Writ of Certiorari was docketed on August 21, 2007 (Exhibit A) and is presently calendared for conference on September 24, 2007.

4. Notwithstanding the Court's Rule 15.3 gives a respondent 30 days from the docketing of a petition for a writ of certiorari to file a brief in opposition – thereby affording the Solicitor General until September 20, 2007 – he took a mere six days from the docketing of my 36-page Petition[2] and its

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[1] In such event, I am herewith filing this original motion with 10 copies pursuant to this Court's Rule 21.2c

[2] I take this opportunity to thank the Chief Justice for granting my motion to exceed page limits, as likewise my motion for an extension of time to file my Petition – and

substantiating 310-page appendix to notify the Court, on August 27, 2007, that:

> "The Government hereby waives its right to file a response to the petition in this case, unless requested to do so by the Court." (Exhibit B, underlining added).

5. Unless the Solicitor General is to be exempted from mandatory ethical rules of professional responsibility applicable to every lawyer, let alone exempted from his transcendent responsibilities as a Government lawyer, indeed, one in highest authority, this Court cannot accept such waiver unaccompanied, as it is, by a statement of the Solicitor General that he is bringing the fact-specific, documentary evidence of judicial and prosecutorial corruption that is the subject of my Petition to the attention of "appropriate professional authority". Quite simply, the Solicitor General's waiver herein violates his mandatory obligations under Rule 8.3 of the District of Columbia's Rules of Professional Conduct and Rule 8.3 of the American Bar Association's Model Rules of Professional Conduct, which it mirrors, as well as his duty as the Government's representative before this Court.

5. Rule 8.3 of D.C.'s Rules of Professional Conduct, entitled "Reporting Professional Misconduct", states, in pertinent part:

> "(a) A lawyer who knows that another lawyer has committed a violation of the

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abjectly apologize for the typographical error on the Petition's first page, in the name of the Chief Justice, no less, whose middle initial should have been G, not D.

> Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the appropriate professional authority.
>
> (b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority."

6. Additionally pertinent, Rule 3.8 of D.C.'s Code of Professional Conduct, entitled "Special Responsibilities of a Prosecutor" – the commentary to which begins "A prosecutor has the responsibility of a minister of justice and not simply that of an advocate...". It, too, mirrors Rule 3.8 of the American Bar Association's Model Rules of Professional Conduct and its commentary.

7. This Court has articulated the U.S. Attorney's role in our justice system – a role assumed by the Solicitor General when he takes over for the U.S. Attorneys in advocacy before this Court:

> "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape nor innocence suffer.",

Young v. U.S. ex rel Vuitton et Fils S.A., 481 U.S. 787, 803 (1987), quoting *Berger v. United States*, 295 U.S. 78, 88 (1935).

8. In *Brady v. Maryland*, 373 U.S. 83, 88 (1963), this Court quoted former Solicitor General Simon E. Sobeloff as to the Solicitor General's role:

> "The Solicitor General is not a neutral, he is an advocate; but an advocate for a client whose business is not merely to prevail in the instant case. My client's chief business is not to achieve victory but to establish justice. We are constantly reminded of the now classic words penned by one of my illustrious predecessors, Frederick William Lehmann, that the Government wins its point when justice is done in its courts."[3]

9. This Court's Rule 15.2 is very specific as to the purpose of a brief in opposition to a petition for a writ of certiorari:

> "In addition to presenting other arguments for denying the petition, the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted.

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[3] Such appears at footnote 2 of *Brady v. Maryland*, annotating the text:

> "An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: 'The United States wins its point whenever justice is done its citizens in the courts.'"

> Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition..." (underlining added)

10. The Solicitor General is not exempted from counsel's "obligation to the Court to point out any perceived misstatement" material to its grant of certiorari – which, had there been any, he could easily have ascertained from the U.S. Attorney for the District of Columbia for whom he here speaks[4]. Consequently, his waiver of the Government's "right to file a response" (Exhibit B) must be deemed a concession that the U.S. Attorney for the District of Columbia does not deny or dispute the Petition's factual and legal showing as to the state of the record and the issues before the Court by reason thereof. Yet, such record, being one of pervasive judicial lawlessness by the District of Columbia Court of Appeals, covering up pervasive judicial lawlessness

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[4] This Court's rules required me to serve the Solicitor General with three copies of the Petition – presumably one of which he forwarded for review and comment to the U.S. Attorney for the District of Columbia. This would be consistent with procedure outlined by the Chief Justice's article "*Riding the Coattails of the Solicitor General*" (Legal Times, March 29, 1993) in cases where the Government is not a party and the Court invites his response to a cert petition:

> "The procedure of the Office of the Solicitor General in responding (which it always does) is to request a draft from the pertinent Justice Department division in 30 days and to try to meet an informal, internal deadline for responding to the Court in 60 days."

At bar, "the pertinent Justice Department division" would be the U.S. Attorney for the District of Columbia.

in the District of Columbia Superior Court and pervasive prosecutorial misconduct before both courts by the U.S. Attorney for the District of Columbia[5], must necessarily trigger – if the Solicitor General's "business" truly is to "establish justice" – either an affirmative endorsement for this Court's granting of the Petition or notification to the Court that he is referring the Petition to disciplinary and criminal authorities for investigation and prosecution of the involved D.C. judges and U.S. Attorney staff. Instead, the Solicitor General has proffered his one-sentence waiver of the Government's "right to file a response".

11. There is no reason for the Court not to "request", if not order, the Solicitor General to file a brief as to the Government's response to the judicial and prosecutorial corruption particularized by my Petition and substantiated by the appendix documents. Doing so is incumbent upon any court committed to ensuring the integrity of the most important institutional players in the criminal justice system: judges and prosecutors. Such is consistent with the "appropriate action" called for by Canon 3B of the Code of Conduct for United States Judges[6] and would set a role model example for

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[5] Prosecutorial misconduct of the U.S. Attorney for the District of Columbia was the subject of reprimand and warning by the United States Court of Appeals for the District of Columbia Circuit in its decision in *United States v. Williams*, 952 F.2d 418 (1991). The U.S. Attorney's described misconduct of misstating the record in his respondent's brief is infinitesimal compared to my case where, *inter alia*, the U.S. Attorney's brief was a demonstrated "fraud on the court" for which I sought sanctions and his referral to disciplinary and criminal authorities [Petition, at p. 30].

[6] As set forth by my Petition in support of its fourth and culminating question "Does this Court recognize supervisory

emulation by other courts. As set forth in the powerful – and troubling – law review article "*The Judge's Role in the Enforcement of Ethics – Fear and Learning in the Profession*" (John M. Levy, Santa Clara Law Review, Vol. 22, pp. 95-116 (1982)):

> "If the Supreme Court started the process of openly commenting on ethical issues inherent in their cases, other courts would follow. Without leadership or a role model there will be no movement." at p. 116.

12. Even where the Government is not a party, the Court may request the views of the Solicitor General "At the certiorari stage, prior to deciding whether to grant review". Such was stated by the Chief Justice, formerly Principal Deputy Solicitor General (1989-1993), in his article "*Riding the Coattails of the Solicitor General*" (Legal Times, March 29, 1993). The article identifies that "Any one justice can precipitate an invitation" for the Solicitor General's views.

13. As the Chief Justice's article highlights the considerable weight the Court gives to the Solicitor General's views, it underscores the prejudice to me by the Solicitor General, whose

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and ethical duties when a Petition for a Writ of Certiorari presents readily-verifiable 'reliable evidence' of judicial misconduct and corruption?" (Exhibit C, p. 36).

> "Codes of judicial conduct uniformly require that judges 'take appropriate action' when they receive 'reliable evidence' of judicial misconduct. Among these, the Code of Conduct for United States Judges, to which this Court's Justices look for guidance, Report of the National Commission on Judicial Discipline and Removal, p. 122 (1993)."

coattails I was entitled to ride by his response to my Petition's "Questions Presented for Review" and argument with respect thereto (Exhibit C). Inasmuch as the Government is here a party, the Solicitor General's response is now rightfully compelled by order of the Court. Such will enable the Justices to better recognize their obligations in face of the flagrant injustice done by the District of Columbia courts not only to me, but to the issues of constitutional magnitude and public importance that I brought for their adjudication and which are now before this Court.

WHEREFORE, petitioner respectfully prays that the Chief Justice, or, alternatively, the Associate Justices and/or the Court "request", if not order, the United States Solicitor General to file the Government's response to her Petition for a Writ of Certiorari to the District of Columbia Court of Appeals.

_____s/_____
ELENA RUTH SASSOWER

Sworn to before me this
17th of September 2007

_____s/_____
Notary Public

TABLE OF EXHIBITS
(Petitioner's September 17, 2007 motion to compel Solicitor General's response)

Exhibit A: Supreme Court's August 21, 2007 letter to Petitioner, with enclosed form **[RA-12]**

Exhibit B: U.S. Solicitor General's August 27, 2007 waiver of the Government's "right to file a response" **[RA- 14]**

Exhibit C: Pages from Petition for Writ of Certiorari **[RA-15]**
pp. i-iii: "Questions Presented"
pp. 2-3: "Statement of the Case"
pp. 34-36: "Reasons for Granting the Writ"

Exhibit A to petitioner's September 17, 2007 motion to compel Solicitor General's response

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

August 21, 2007

Ms. Elena Ruth Sassower
16 Lake Street
Apartment 2C
White Plains, NY 10603

Re: Elena Ruth Sassower
v. United States
No. 07-228

Dear Ms. Sassower:

The petition for a writ of certiorari in the above entitled case was filed on August 17, 2007 and placed on the docket August 21, 2007 as No. 07-228.

Forms are enclosed for notifying opposing counsel that the case was docketed.

Sincerely,

William K. Suter, Clerk
by s/
Erik A. Fossum
Case Analyst

Enclosures

Supreme Court of the United States

Elena Ruth Sassower
(Petitioner)
v. No. 07-228
United States
(Respondent)
To _____ Counsel for Respondent:

NOTICE IS HEREBY GIVEN pursuant to Rule 12.3 that a petition for a writ of certiorari in the above-entitled case was filed in the Supreme Court of the United States on August 17, 2007, and placed on the docket August 21, 2007. Pursuant to Rule 15.3, the due date for a brief in opposition is Thursday, September 20, 2007. If the due date is a Saturday, Sunday, or federal legal holiday, the brief is due on the next day that is not a Saturday, Sunday, or federal legal holiday.

Unless the Solicitor General of the United States represents the respondent, a waiver form is enclosed and should be sent to the Clerk only in the event you do not intend to file a response to the petition.

Only counsel of record will receive notification of the Court's action in this case. Counsel of record must be a member of the Bar of this Court.

Ms. Elena Ruth Sassower
Post Office Box 8220
White Plains, NY 10602
(914) 421-1200

NOTE: This notice is for notification purposes only, and neither the original nor a copy should be filed in the Supreme Court.

Exhibit B to petitioner's September 17, 2007 motion to compel Solicitor General's response

IN THE SUPEME COURT
OF THE UNITED STATES

SASSOWER, ELENA RUTH
Petitioner

vs. No: 07-0228

USA

WAIVER

The Government hereby waives its right to file a response to the petition in this case, unless requested to do so by the Court.

PAUL D. CLEMENT
Solicitor General
Counsel of Record

August 27, 2007

cc:

ELENA RUTH SASSOWER
16 LAKE STREET
APT. 2C
WHITE PLAINS, NY 10603

Exhibit C to petitioner's September 17, 2007 motion to compel Solicitor General's response

QUESTIONS PRESENTED

1. Is it a constitutional violation, *prima facie* disqualifying, and misconduct *per se* for a court to conceal and wilfully fail to adjudicate a motion for its disqualification, disclosure, and transfer – and does it have jurisdiction to proceed further in the matter?

2. Was the District of Columbia Court of Appeals disqualified for interest and for pervasive actual bias meeting the "impossibility of fair judgment" standard of *Liteky v. United States*, 510 U.S. 540 (1994), from adjudicating these consolidated appeals, entitling petitioner to transfer to the United States Court of Appeals for the District of Columbia, including pursuant to D.C. Code §10-503.18?

3. Does the District of Columbia Court of Appeals' Memorandum Opinion and Judgment further manifest that Court's interest and pervasive actual bias and is it so materially false and insupportable as to be, in and of itself, unconstitutional under the Due Process Clause?

4. Does this Court recognize supervisory and ethical duties when a Petition for a Writ of Certiorari presents readily-verifiable "reliable evidence" of judicial misconduct and corruption?

   (1) to make referrals to disciplinary and criminal authorities

(2) to adjudicate the appellate issues, subverted by the underlying judicial misconduct and corruption, where those issues are of constitutional magnitude and public importance, *to wit*,*

"i. As evidenced from the course of the proceedings before Judge Holeman, was [petitioner] entitled to his disqualification for pervasive actual bias meeting the 'impossibility of fair judgment' standard articulated by the U.S. Supreme Court in *Liteky v. United States*, 510 U.S. 540? *

A. Were [petitioner's] February 23 and March 22, 2004 pretrial motions to disqualify Judge Holeman sufficient, as a matter of law, to require his disqualification for pervasive actual bias, divesting him of jurisdiction to 'proceed...further', pursuant to D.C. Superior Court Civil Procedure Rule 63-I – and was there any basis in fact and law for Judge Holeman's conduct and rulings challenged therein?

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* The four appellate issues that petitioner presented to the D.C. Court of Appeals, which its Memorandum Opinion and Judgment materially falsified, are set forth *verbatim* on this page and the next. The only change is the substitution of the word "petitioner" for "appellant" – as petitioner here presents these four appellate issues for this Court's adjudication.

"* Encompassed in this issue is whether Judge Holeman's rulings, individually and collectively, were so egregiously 'erroneous' and prejudicial as to require reversal."

B. Were Judge Holeman's subsequent pretrial, trial, and post-trial rulings further confirmatory of his pervasive actual bias – and were they factually and legally supported?

ii. Whether D.C. Code §10-503.18 entitled [petitioner] to removal/transfer of this 'disruption of Congress' case to the U.S. District Court for the District of Columbia where, additionally, the record establishes a pervasive pattern of egregious violations of her fundamental due process rights and 'protectionism' of the government?

iii. Is the 'disruption of Congress' statute, D.C. Code §10-503.16(b)(4), unconstitutional, *as written and as applied*?

iv. Whether, when Judge Holeman suspended execution of the 92-day jail sentence he imposed upon [petitioner], his terms of probation were appropriate and constitutional and whether, when [petitioner] exercised her right to decline those terms, pursuant to D.C. Code §16-760, it was legal and constitutional for him to double the 92-day jail sentence to six months?"

[p. 2] Rules 9 and 14; Code of Judicial Conduct for the District of Columbia Courts: Canons 3B, C, D, E, & F, American Bar Association Code of Judicial Conduct, Canons 3C & D; Code of Conduct for U.S. Judges, Canon 3B [A-1-12c].

STATEMENT OF THE CASE

> "The law makes a promise – neutrality. If the promise gets broken, the law as we know it ceases to exist." – Justice Anthony M. Kennedy[2]

This case demonstrates the truth of Justice Kennedy's words, exposing a long nightmare of judicial lawlessness resulting from the deliberate and repeated breaking of the law's promise of neutrality by judges self-interested in the outcome.

No facts are required for petitioner's first issue other than that the D.C. Court of Appeals allowed to stand a Memorandum Opinion and Judgment which conceals, without adjudication, her motion to its Chief Judge and the appellate panel for judicial disqualification, disclosure and transfer [A-282]. Nonetheless, the facts required for petitioner's further issues are also germane to her first. Over and again, they presage what the D.C. Court of Appeals ultimately did and reinforce the necessity that this Court articulate the simple legal

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[2] This quote is from a speech Justice Kennedy gave at the American Bar Association symposium, "Bulwarks of the Republic: Judicial Independence and Accountability in the American System of Justice", held December 4-5, 1998 in Philadelphia, Pennsylvania. The quote is featured on the website of the Justice at Stake Campaign (www.justiceatstake.org) as to "Why Judicial Independence Matters", followed by the assertion "there are mechanisms to hold judges accountable. Rulings can be appealed up to the Supreme Court."

proposition – critical to ensuring judicial neutrality – that a court's willful failure to confront judicial disqualification/disclosure issues is *prima facie* disqualifying, misconduct *per se*, and divests it of jurisdiction to proceed further. The Court has never **[p. 3]** spoken on the subject.

Ordinarily, a brief factual summary would suffice. Here, however, a lengthier summary is essential because the Memorandum Opinion and Judgment materially falsifies the "disruption of Congress" incident, materially falsifies petitioner's four appellate issues to the D.C. Court of Appeals and the record with respect thereto, and materially omits all that Court's extensive prior contact with the case. It is this prior contact, spanning 2-1/2 years and embracing all four of those appellate issues, that underlies petitioner's unadjudicated and concealed motion for disqualification, disclosure and transfer – and establishes the D.C. Court of Appeals' disqualification for interest and pervasive actual bias meeting the "impossibility of fair judgment" standard of *Liteky v. United States,* 510 U.S. 540 (1994).

It must be noted that with one limited exception [A-34], all the D.C. Court of Appeals' orders during this 2-1/2-year span themselves conceal petitioner's prior motions for its disqualification, disclosure, and transfer. Consequently, these orders, though included in the appendix herein, cannot and do not provide information about the disqualification/disclosure/transfer issues. This has left petitioner with no choice but to herself recite the facts pertaining to her prior motions and those orders. Though consuming virtually the entirety of her cert petition, such provides this Court with the firmest of foundations for granting the petition.

The Alleged "Disruption of Congress"

Petitioner Elena Ruth Sassower is director of the Center for Judicial Accountability, Inc. (CJA), a national, non-partisan, non-profit citizens' organization dedicated to ensuring that the processes of judicial selection and discipline are effective and meaningful, which she co-founded in 1993. Until January 2006, she was its coordinator.

On May 22, 2003, petitioner was arrested on a single misdemeanor charge of "disruption of Congress"

* * *

[p. 34] REASONS FOR GRANTING THE WRIT

This Court has direct jurisdiction over the D.C. Court of Appeals. Where, as here, a petition presents "reliable evidence" that D.C.'s highest court has flagrantly corrupted the judicial process to deprive a petitioner and the public of honest adjudication of far-reaching appellate issues, each of constitutional magnitude, to which they were constitutionally entitled, this Court's supervisory obligations are mandatory, as likewise its role-model responsibilities.

It is a Constitutional Violation, *Prima Facie* Disqualifying, and Misconduct *Per Se* for a Court to Wilfully Fail to Adjudicate a Motion for its Disqualification and for Disclosure – and It Has No Jurisdiction to Proceed Further in the Matter

This Court has recognized that "[A] biased decisionmaker [is] constitutionally unacceptable", *Withrow v. Larkin*, 421 U.S. 35, 47 (1975), and "motions for change of venue to escape a biased

tribunal raise constitutional issues both relevant and essential", *Holt v. Virginia*, 381 U.S. 131, 136 (1965). Consequently, a motion to disqualify a court for bias and interest and to change venue necessarily raises constitutional issues which cannot be left unadjudicated without compounding the potential constitutional violation.

A court's wilful failure to adjudicate such motion must be deemed *prima facie* disqualifying and misconduct *per se* as the inference reasonably drawn is that adjudication would compel conceding the facts and law entitling relief. That a court would conceal the motion's very existence only reinforces this, II Wigmore on Evidence §278 at 133 (1979).

Absent adjudication of a pending disqualification/disclosure motion, a court must be deemed without jurisdiction to proceed further, *See* 48A Corpus Juris Secundum, §145; Judicial Disqualification: [p. 35] Recusal and Disqualification of Judges, §22.1, Richard E. Flamm, Little, Brown & Company (1996).

The D.C. Court of Appeals was Disqualified from these Appeals, Requiring Transfer, Including Pursuant to D.C. Code §10-503.18

The record establishes again and again during 2-1/2 years of proceedings in the D.C. Court of Appeals that its judges wilfully concealed and failed to adjudicate petitioner's requests for their disqualification, for disclosure, and for change of venue. Such conduct suffices to have disqualified them from the appeals, apart from the factual and legal baselessness of their orders, meeting the "impossibility of fair judgment" standard of *Liteky*.

Tellingly, the Memorandum Opinion and

Judgment conceals [A-16] that petitioner's second appellate issue asked whether she would be entitled to removal/transfer to federal court under D.C. Code §10-503.18 based on a record showing "a pervasive pattern of egregious violations of her fundamental due process rights and 'protectionism by the government" [A-306] – and that her brief had identified the record to include the D.C. Court of Appeals proceedings herein [A-239 (fn. 13].

The Memorandum Opinion & Judgment Further Manifests the D.C. Court of Appeals' Pervasive Actual Bias and Interest as it is Materially False and Knowingly So, Making it Additionally Unconstitutional

In denying rehearing and rehearing *en banc*, the D.C. Court of Appeals did not deny or dispute petitioner's particularized showing that its Memorandum Opinion and Judgment further manifested "its pervasive actual bias, born of interest" [A-297]. Such Opinion and Judgment, demonstrated to be materially false, unsupported – and flagrantly so – is additionally unconstitutional under the Due Process Clause. *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960). **[p. 36]**

This Court's Supervisory & Ethical Duties Mandate "Appropriate Action" When a Cert Petition Presents "Reliable Evidence" of Judicial Misconduct and Corruption

Codes of judicial conduct uniformly require that judges "take appropriate action" when they receive "reliable evidence" of judicial misconduct. Among these, the Code of Conduct for United States

Judges, to which this Court's Justices look for guidance, Report of the National Commission on Judicial Discipline and Removal, p. 122 (1993). As the Court plays a vital role-model function, its adherence to such codes is critical, "*The Judge's Role in the Enforcement of Ethics – Fear and Learning in the Profession*", John M. Levy, Santa Clara Law Review: Vol. 22, pp. 95-116 (1982).

This petition presents "reliable", indeed readily-verifiable, evidence of corrupt, lawless conduct by D.C. judges – triggering the Court's "appropriate action" under the Codes. In addition to disciplinary and criminal referrals, such requires redress of the injury done to petitioner and the public by the Memorandum Opinion and Judgment's dishonest, insupportable adjudications of the four appellate issues petitioner presented – each of constitutional magnitude and public importance.

Illustrative is petitioner's challenge to the constitutionality of the disruption of Congress statute, *as written and as applied*. The Memorandum Opinion rejects the challenge by claims [A-17] whose knowing falsity are instantly apparent from her appellate brief [A-240, 307]. Based thereon, any fair and impartial tribunal would have been compelled to strike the statute as unconstitutional in both respects and to reaffirm that "a citizen's respectful request to testify at a congressional committee's public hearing is not – and must never be deemed to be – 'disruption of Congress'". Such must now be done by this Court, with rulings similarly reaffirming of basic constitutional principles as to the three other appellate issues of petitioner's brief [A-230, A-238, A-252]

Petitioner's October 9, 2007 motion for clarification & recall/vacatur

No. 07-228

IN THE SUPREME COURT
OF THE UNITED STATES
October Term 2006

ELENA RUTH SASSOWER,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

MOTION FOR CLARIFICATION BY THE CHIEF JUSTICE, & FOR RECALL/VACATUR OF THE COURT'S OCTOBER 1, 2007 ORDER DENYING CERTIORARI & ADJUDICATION OF PETITIONER'S SEPTEMBER 17, 2007 MOTION TO COMPEL THE UNITED STATES SOLICITOR GENERAL'S RESPONSE TO HER PETITION FOR A WRIT OF CERTIORARI

To the Honorable John G. Roberts, Jr., Chief Justice of the Supreme Court of the United States and Circuit Justice for the District of Columbia:

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

1. I am the petitioner *pro se* and bring this application pursuant to Rule 22.1[1]:

> (a) for clarification of the Chief Justice's April 26, 2007 opinion in *Boumediene, et al. v. George W. Bush, et al.*, 127 S.Ct. 1725, which the Clerk's Office has represented will be the basis for its returning to me, unfiled, this motion for an extension of time to file my petition for rehearing of the Court's October 1, 2007 order denying my petition for a writ of certiorari (Exhibit 1-a); and
>
> (b) for recall/vacatur of the Court's October 1, 2007 order and adjudication of my September 17, 2007 motion to compel the United States Solicitor General's response to my cert petition (Exhibit 2).

2. The requested extension sought by my first branch and the recall/vacatur sought by my second branch are each based on the misconduct of the Clerk's Office in connection with my September 17, 2007 motion. As to this misconduct, I seek appropriate supervisory oversight by the Chief Justice, and, if necessary, the Court, beginning with a direction that Clerk William K. Suter respond to my unresponded-to September 21, 2007 letter to him (Exhibit 3-a).

3. To the extent the Chief Justice does not have authority pursuant to Rule 22.1 to recall/vacate the Court's October 1, 2007 order based on the

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[1] "An application addressed to an individual Justice shall be filed with the Clerk, who will transmit it promptly to the Justice concerned if an individual Justice has authority to grant the relief sought."

Clerk's Office misconduct, I request that he present such branch to the Associate Justices for determination, pursuant to Rule 21, pending which he stay my time to file my petition for rehearing until 25 days from the Court's decision therein, with an additional five days for mailing.

4. Needless to say, should the Chief Justice or the Court recall/vacate the October 1, 2007 order and grant my September 17, 2007 motion, I will not need to petition for rehearing, at least not at this time.

AS FOR MY FIRST BRANCH RELIEF: CLARIFICATION

5. In his opinion in *Boumediene*[2] – a case

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[2] The pertinent language of such opinion was brought to my attention on Friday afternoon, October 5th, by Supervisory Case Analyst Jeff Atkins, who acknowledged having received the two voice mail messages I had left for him the previous day, neither of which he had returned. Such voice mail messages had followed upon my speaking with case analyst Melissa Blalock in connection with my intended motion to extend my time to file a petition for rehearing from the Court's October 1, 2007 order denying my cert petition. Ms. Blalock had informed me that such would be sent back to me, but refused to identify where the Court Rules proscribed such motion or to discuss with me Rule 30.3. She told me to speak with Mr. Atkins, for whom I left my two voice mail messages for clarification on Thursday, October 4th.

Following my conversation with Mr. Atkins on October 5th, I left two additional voice mail messages for him – one about 2 hours later after I had gone to the law library and obtained the *Boumediene* opinion, and the second, today, Tuesday morning, October 9th, each requesting verification of what I understood Ms. Blalock to have told me: that the Clerk's Office had some sort of letter rejecting such extension applications and that it either gets or had been getting a great many of these applications.

where certiorari was subsequently granted[3] – the Chief Justice, as Circuit Justice, denied an application to extend time to file a petition for rehearing from an order denying certiorari, stating:

> "...while Rule 44.1 establishes a 25-day period for filing a petition for rehearing of a judgment on the merits 'unless the Court or a Justice shortens or extends the time,' Rule 44.2, articulating a 25-day period for filing a petition for rehearing of an order denying certiorari, contains no such exception, confirming that the Rules do not contemplate granting an extension for such petitions."

6. The assertion that "the Rules do not contemplate granting an extension for such petitions" is not the equivalent of saying that the Rules proscribe them, which the Chief Justice did not

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I received no return call from Mr. Atkins. However, according to case analyst Sandy Spagnolo, with whom I spoke after leaving my today's voice mail message for Mr. Atkins, the Clerk's Office's only letter on the subject is not from the Chief Justice, the Associate Justices, or the Clerk. Rather, it is the rejection letter that the Clerk's Office sends to petitioners who send in extension applications. Ms. Spagnolo, who – like Ms. Blalock – would not discuss with me the Court's Rule 30.3 – stated to me that she was unfamiliar with the *Boumediene* opinion and appeared to confirm that the Court gets considerable numbers of applications to extend time to file petitions for rehearing of orders denying certiorari.

[3] Certiorari granted June 29, 2007 – 127 S.Ct. 3078. According to The New York Times in reporting on the grant of certiorari in *Boumediene*, "The court rarely grants such motions for reconsideration. Some experts on Supreme Court procedure said they knew of no similar reversal by the court in decades." ("*In Shift, Justices Agree to Review Detainees' Case*", William Glaberson, 6/30/07).

say.

7. Indeed, there is another way of interpreting the language "unless the Court or a Justice shortens or extends the time" appearing in Rule 44.1. It may refer to the authority of the Court or Justices to alter the 25-day time frame as part of the "judgment on the merits" itself. Such would be consistent with the Clerk's Office's interpretation of the language in Rule 15.1, at issue with respect to my September 17, 2007 motion, that "when ordered by the Court" means the Court acting "on its own volition".

8. That the Rules do not preclude a party from seeking an extension of time to file a petition for rehearing of an order denying certiorari is further borne out by Rule 30, reference to which the opinion omits. Such Rule bears the title "Computation and Extension of Time" (underlining added). Its subdivision 3 expressly states, in pertinent part:

> "An application to extend the time to file a petition for a writ of certiorari, to file a jurisdictional statement, to file a reply brief on the merits, or to file a petition for rehearing shall be made to an individual Justice...". (underlining added).

Conspicuously absent is any distinction as to the type of petition for rehearing for which a party can apply for an extension, which, if intended, Rule 30.3 could have distinguished, just as it did in specifying "a reply brief on the merits".

9. Nor does the opinion address the interpretation that has been given to Rule 30 and its

predecessor provisions, reflected in the Court's practice, over untold years, perhaps decades, *to wit*, that the Clerk's Office, in compliance with accepted interpretation of the Rules, has received and filed these extension applications, thereupon channeling them to the individual Justices for their determination. Indeed, 14 years ago, in 1993, my own application for such an extension arising from the Court's denial of cert in *Sassower v. Field* (#92-1405) was directed to Associate Justice Clarence Thomas, then the Circuit Justice for the Second Circuit. Five years later, in 1998, my mother's application for such extension arising from the Court's denial of cert in *Sassower v. Mangano* (#98-106) was directed to Associate Justice Ruth Bader Ginsberg, then, as now, Circuit Justice for the Second Circuit. Both these Justices denied the extension applications. Similarly, the extension application in *Boumediene* was filed by the Clerk's Office and directed to the Chief Justice, who denied it.

10. Treatise authority such as Moore's Federal Practice also reflects the view that the Court's Rules allow for applications to extend time to file rehearing petitions from the denial of certiorari. Its volume 23 analyzes the Court's Rules and contains a §544.03 entitled "Requirements for Petition for Rehearing of Order Denying Certiorari" which states "...petitions for rehearing must be filed within 25 days after the date of the order of denial, unless that time is shortened or extended by the Court or a Justice...". Its §530.03 "Applications for Extensions of Time" recites at subdivision "[2]...An application for an extension of time...to file a petition for rehearing must be directed to an individual Justice...".

11. I do not know whether the Chief Justice submitted his interpretation of Rule 44 to the Associate Justices, but, assumedly, had he done so – and, certainly, had he consulted with the Clerk's Office – he would have been alerted to the ambiguity created by Rule 30, which his opinion does not cite. In any event, in the very period in which his opinion in *Boumediene* was rendered, the Court was revising its Rules. By Court order dated July 17, 2007, such revisions were "approved by the Court and lodged with the Clerk" and were to be effective October 1, 2007. The Court made no modification to Rule 44 and 30 to reflect any change in the long-accepted interpretation and practice of allowing extension applications for petitions for rehearing of orders denying certiorari.

12. If the Chief Justice's materially-incomplete opinion in *Boumediene* – unendorsed by the Associate Justices – is sufficient to alter the Court's prior interpretation of its Rules and practice pertaining to extensions for rehearing on cert denials, such should be embodied in something more publicly-circulated and authoritative than the *Boumediene* opinion, which the Clerk's Office can then selectively whip out to prejudice and sabotage specific litigants and their meritorious cert petitions.

13. That the Clerk's Office, in violation of its obligation to "faithfully and impartially" discharge its duties[4], acts invidiously to prejudice certain litigants and cert petitions – and does so undaunted by the prospect of accountability by the Chief Justice – forms the basis of my requested

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[4] 28 U.S.C. 951 "Oath of office of clerks and deputies".

extension and recall/vacatur relief.

AS FOR MY SECOND BRANCH OF RELIEF: RECALL/VACATUR OF THE COURT'S OCTOBER 1, 2007 ORDER & ADJUDICATION OF MY SEPTEMBER 17, 2007 MOTION

14. This Court's Rule 1 sets forth the sole basis upon which this Court's Clerk can "reject any submitted filing", namely, that it "does not comply" with the Court's Rules.

15. On September 17, 2007, I express-mailed to the Clerk's Office a motion (Exhibit 2) which fully complied with the Rules. It was a motion, pursuant to Rule 22.1, addressed to the Chief Justice, as Circuit Justice, asking that he "request", if not order, the Solicitor General to file the Government's response to my cert petition or, alternatively, that he present the motion to the Associate Justices for their consideration as to whether, individually or collectively, to require such response – in which event, I enclosed 10 copies of the motion, as Rule 21.3(c) requires.

16. The motion detailed that the Solicitor General's waiver of the Government's right to respond to my cert petition had to be rejected because it was violative of his mandatory obligations under ethical rules of professional responsibility, as well as his duty before the Court. This, because my cert petition was not about "error" or divergence in the courts below. Rather, it was about pervasive judicial lawlessness at two levels of the District of Columbia judiciary – its Court of Appeals and its trial level Superior Court – as well as pervasive prosecutorial misconduct by the United States

Attorney's Office for the District of Columbia in a politically-explosive "disruption of Congress" case against me, arising from my exercise of fundamental First Amendment rights[5] in respectfully requesting to testify in opposition to a federal judicial nominee at his public Senate Judiciary Committee confirmation hearing. My motion cited to the Chief Justice's own article, "*Riding the Coattails of the Solicitor General*" (Legal Times, March 29, 1993), to show the importance this Court attaches to the Solicitor General's views[6] and argued that his

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[5] The importance of an independent judiciary to upholding First Amendment rights was the subject of a speech by the Chief Justice on September 19, 2007 – the very day my motion was received by the Clerk's Office and returned to me, unfiled.

Although I have been told by the Court's Public Information Office that copies of the Chief Justice's speech will not be made available, its essence can be gleaned by from press coverage. Among these: "*Nation's top jurist says independent courts vital to free speech*", William Kates/Associated Press, 9/19/07; "*Roberts: Strong courts essential to free speech*", Tony Mauro/First Amendment Center, Legal Times, 9/20/07; "*Telling It Like It Isn't: John Roberts speaks out. A little.*", Dahlia Lithwick/Slate, 9/19/07.

[6] *Cf.* "*When (and Why) Does the U.S. Go To Court?*", Christopher J. W. Zorn (Dept. of Political Science, Emory University), presented at the Annual Meeting of the Midwest Political Science Association, 1997:

> "The United States federal government is the most frequent, the most important, and the most successful litigant in the American federal courts. On average, around forty percent of the cases heard by the U.S. Supreme Court involve the government as a party. Court cases involving the United States typically involve the most consequential issues for people's lives.... Because of its frequency in court, the United States is the only single litigant capable of significantly affecting the shape of the law across this

response to the cert petition was not only threshold to the petition's proper consideration by the Court, but to the Court's recognition of its mandatory obligations embodied in the petition's fourth and culminating "Question Presented":

> "4. Does this Court recognize supervisory and ethical duties when a Petition for a Writ of Certiorari presents readily-verifiable 'reliable evidence' of judicial misconduct and corruption?
>
> (1) to make referrals to disciplinary and criminal authorities
>
> (2) to adjudicate the appellate issues, subverted by the underlying judicial misconduct and corruption, where those issues are of constitutional magnitude and public importance..."

17. Among these issues: the pervasive actual bias of the D.C. Superior Court judge, reaching the "impossibility of fair judgment" standard that the Court enunciated in *Liteky v. United States*, 510 U.S. 540 (1994), the unconstitutionality of the disruption of Congress statute, *as written and as applied*, and proper interpretation of its venue provision, the

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whole range of issues. And in those cases, the federal government wins far more often than any other litigant: the result of which is that the position taken by the government in its litigation, more often than not, becomes the law of the land. In sum, no other litigant wields the influence of the United States in matters of the law."

unconstitutionality of the Superior Court judge's probation terms, as well as my legal right to decline such terms, without the judge thereupon retaliating against me by doubling his previously-announced 92-day jail sentence and immediately jailing me for six months.

18. Yet, this crucial September 17, 2007 motion, so vital to my rights, those of the public, and the state of our law, never reached the Chief Justice because the Clerk's Office returned it to me – and did so without even entering the motion on the case docket as having been received and returned, thereby concealing what it had done (Exhibit 1-b)[7].

19. I learned of the motion's return when I telephoned the Clerk's Office on Thursday afternoon, September 20, 2007. I spoke with Supervisory Case Analyst Jeffrey Atkins, who gave as the sole reason for the return that the Court, of "its own volition", can request the Solicitor General to file a response. My reply to him – as it had been on September 17, 2007 when I first phoned him about my intended motion – was that I could not reasonably rely on a busy Court to exercise its *sua sponte* power; that it was my position that the Solicitor General's waiver in the case at bar was violative of ethical rules of professional responsibility and his official duty; and that nothing in the Court's Rules, which I had read, precluded me from making a motion for the Court to direct the Solicitor General to file the Government's response to my cert petition.

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[7] A docket is defined as "A formal record in which a judge or court clerk briefly notes all the proceedings and filings in a court case." (underlining added) Black's Law Dictionary (8th edition, 1999, West Publishing Co.).

20. I asked Mr. Atkins which of the Court's Rules allowed the Clerk's Office to take over for the Chief Justice in effectively deciding my motion by returning it to me. He answered by telling me to "Have a good day" and disconnecting the phone conversation.

21. I thereafter called Mr. Atkins back – twice – but only got his voice mail. I left messages asking that he confirm whether – as it seemed – he had hung up on me. I reiterated my request that he identify which Court Rules authorized the Clerk's Office to return my motion and to do so without even recording its receipt and rejection, thereby creating a docket with a materially false case history. I stated that if he did not phone me back as soon as possible, I would have no choice but to seek supervisory oversight from his superiors.

22. In the absence of Mr. Atkins' return call, I telephoned the Clerk's Office and requested to speak with Mr. Suter. However, I was told by two separate people in the Clerk's Office that Mr. Suter does not take phone calls, that I could also not speak with his secretary, that I could not leave a voice mail message for him, and that the only way I could communicate with him was by letter. This, notwithstanding I explained the exigency of the situation, with the case on the Court's conference calendar for Monday, September 24, 2007.

23. Apparently, Chief Deputy Clerk Chris Vasil does take calls. Yet, upon being put through to Mr. Vasil, he put me "on hold" once I identified myself. I remained "on hold" for over five minutes, before hanging up. When I called him again shortly thereafter, I got only Mr. Vasil's voice mail. My

message for him summarized the exigency of the situation and requested his return call.

24. Despite this stated exigency, neither Mr. Atkins nor Mr. Vasil called me back – and by late in the afternoon the following day, Friday, September 21, 2007, I express-mailed[8] a letter to Mr. Suter, entitled "Clarification of Practices & Procedures at the U.S. Supreme Court Clerk's Office & Misconduct Complaint against Clerk Office Staff" (Exhibit 3-a), enclosing copies for Mr. Atkins and Mr. Vasil, both indicated recipients. After reciting the particulars of my communications with the Clerk's Office the previous day, I requested Mr. Suter to "promptly advise, including by fax and/or e-mail",

> (a) whether he approved of the described conduct of Mr. Atkins and Mr. Vasil;

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[8] Before doing so, I sought to confirm that the fax number I had for the Clerk's Office from nine years ago was still good and, if not, to obtain the new number. Lo and behold, upon calling the Clerk's Office and explaining that I needed Mr. Suter's fax number, I was told "let me get you to his secretary". The voice mail of Lynn Holtz then picked up, identifying that I had reached Mr. Suter's Office. Her messages stated that she was away until September 24th, but callers needing immediate assistance could contact Denise McNerney, whose telephone number was given: 202-479-3032. I then spoke to Ms. McNerney who would not confirm the old fax number I had nor give me a different number, stating that the fax was reserved for urgent matters. I responded that my matter was urgent as the case was calendared for Monday's conference and recited briefly my interaction with the Clerk's Officer, as recited in my letter, for which I required Mr. Suter's immediate supervisory oversight. Ms. McNerney then placed me on hold. I remained on hold for more than ten minutes before finally hanging up. Parenthetically, I was unable to transmit the letter using the old fax number.

(b) which Court Rules, if any, permit the Clerk's Office to have returned my September 17, 2007 motion for the Solicitor General's response to my cert petition – and to have done so without any record having been made in the Court's docket of either receipt of the motion or its return; and

(c) who in the Clerk's Office decided that the Chief Justice should not make his own decision with respect to my motion.

I further requested:

(d) the percentage of criminal cases in which the Solicitor General waives the Government's "right to file a response" to cert petitions; and

(e) whether in any of those criminal cases, the petitioners ever made motions to either a single justice or to the Court for the Government's response – and, if so, whether the Clerk's Office also sent those motions back to the petitioners, and did so without entering them on the case dockets – in which event, I asked for the case numbers or names.

25. I received no response to this letter from Mr. Suter, Mr. Vasil, Mr. Atkins, or anyone else at the Clerk's Office. This, although my letter had expressly stated that I would otherwise be turning to the Chief Justice "who bears ultimate supervisory oversight responsibilities over how the United States Supreme Court Clerk's Office operates".

26. The totality of what I received – which was on the day of the Court's September 24, 2007 conference – was a large padded envelope, postmarked September 19, 2007, containing a letter of that date from Mr. Atkins returning to me my original motion and the ten copies I had sent with it. The sole basis for the return was stated by Mr. Atkins' letter as follows,

> "If the Court wishes to see a response to a petition for a writ of certiorari, the Court will request a response on its own volition." (Exhibit 3-b).

27. Such is not a legal basis for the Clerk's Office to return to me my motion. The Clerk's authority to reject a "submitted filing" is limited by the Court's Rule 1.1 to where it "does not comply with these Rules". There is nothing about my motion (Exhibit 2) which "does not comply with [the Court's] Rules" or which its Rules preclude – and neither Mr. Atkins' September 19, 2007 letter, nor Mr. Atkins when challenged, nor Mr. Suter or Mr. Vasil have contended otherwise. Under such circumstances, the return of my motion was improper, as was the failure of the Clerk's Office, following my September 20, 2007 phone communications and September 21, 2007 letter, to take corrective steps to remove my cert petition from the Court's September 24, 2007 conference calendar so that my motion might be resubmitted for filing pursuant to Rule 29.1[9] and "promptly" transmitted to

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[9] "Any document required or permitted to be presented to the Court or to a Justice shall be filed with the Clerk."

the Chief Justice pursuant to Rule 22.1[10]

28. Insofar as Mr. Atkins' letter speaks of my motion's "request" for the Solicitor General's response (Exhibit 3-b), my motion had put the word "request" in quotation marks (Exhibit 2), reflecting the Solicitor General's phrasing in his waiver, which I believe to be more appropriate to cases where the United States is not a party. For cases where the United States is a party-respondent, as here, the Solicitor General may be "ordered by the Court", as ¶2 of my motion identifies, citing Rule 15.1. Such Rule does not indicate the Court's ordering as the product of "its own volition", rather than a motion made for such relief.

29. Although the Chief Justice's opinion in *Boumediene* does not involve Rule 15.1, it nonetheless provides an interpretive guide. This, because the "ordered by the Court" language of Rule 15.1 has parallels to the "by order of the Court or a Justice" language of Rule 16.3, relating to suspension of an order denying certiorari. Such "order by the Court or a Justice" might also be by the "volition" of the Court or a Justice. Yet, as *Boumediene* reflects, the petitioners therein made an application for suspension relief, which was transmitted to the Chief Justice, who adjudicated it.

30. The fact that this Court – or any court – may act "on its own volition" does not bar a party from making a motion. Plainly, the Court is free to deny the motion, if it is not persuaded by the supporting argument therein, as in *Boumediene*.

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10 See footnote 1 *supra*.

Indeed, this Court, busy as it is with hundreds, if not thousands of cert petitions to determine, as was the case with its September 24, 2007 conference calendar, benefits when it has before it a motion alerting it to salient and distinguishing facts and law which, given the realities of how cert petitions are processed, the Court is not likely to realize *sua sponte*.

31. Canon 3B(2) of the Code of Conduct for United States Judges – to which this Court's justices look for guidance[11] – and which binds all other federal judges[12] – states:

> "A judge should require court officials, staff, and others subject to the judge's direction and control, to observe the same standards of fidelity and diligence applicable to the judge."

No court – and certainly not our nation's highest – can allow its Clerk's Office to behave in the unprofessional and abusive manner recited by my September 21, 2007 letter (Exhibit 3-a) and to ignore such letter, without response. Response is properly required from Mr. Suter, to whom the letter was addressed, including to each of the letter's five enumerated questions. Particularly important is Mr.

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11 Report of the National Commission on Judicial Discipline and Removal, p. 122 (1993).

12 The American Bar Association's Model Code of Judicial Conduct contains a similar rule, Canon 3C(2): "A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties" – replicated in rules binding state and District of Columbia judges.

Suter's response to the last question so that I may know whether the Clerk's Office is taking upon itself to deny me the "Equal Justice under Law", promised by the chiseled words on the Supreme Court's facade and, if so, the basis therefor. Certainly the possibility that the Clerk's Office is functioning in this case – and in other criminal cases – to "protect" the Government from accountability by blocking the Court from deciding motions to compel the Government's response frustrates the Justices from appropriate consideration of cases such as this where the criminal justice system has been hijacked for the ulterior political and personal purposes which my petition reflects.

32. Criminal defendants who make the long, arduous, and expensive journey to this Court in vindication of their lives, liberty, and property must not be denied the Government's response to particularized charges of collusive conduct between judges and prosecutors, as here at issue. Compelling such responses would assist the Court so that, even in denying cert review, it may advance justice by discharging its supervisory and ethical duties to refer "reliable evidence" of judicial and prosecutorial corruption and misconduct to disciplinary and criminal authorities, as Canon 3B(3) of the Code of Conduct for United States Judges requires.

33.. Examination of my September 17, 2007 motion – and my cert petition on which it is based – shows they are dispositive of the Court's supervisory and ethical duties both as to the motion and the petition.

WHEREFORE, petitioner respectfully prays that the Chief Justice stay her time to file her petition for rehearing of the Court's October 1, 2007 order denying her petition for a writ of certiorari pending response from the Court's Clerk, William K. Suter, to her September 21, 2007 letter, which must be directed, and grant her a 30-day extension from the date of the decision on her entitlement to recall/vacatur of the Court's October 1, 2007 order and to adjudication of her September 17, 2007 motion to compel the United States Solicitor General's response to her petition for a writ of certiorari, with such other and further relief as may be just and proper.

_____s/_____
ELENA RUTH SASSOWER

Sworn to before me this
9th of October 2007

_____s/_____
Notary Public

TABLE OF EXHIBITS
(Petitioner's October 9, 2007 motion for clarification & recall/vacatur)

Exhibit 1-a: October 1, 2007 letter from the Court's Clerk, William K. Suter, giving notice of the Court's denial of petition for a writ of certiorari **[RA-1]**

Exhibit 1-b: Clerk's Office Computerized Docket Sheet **[RA-44]**

Exhibit 2: Petitioner's September 17, 2007 motion, with express mail receipt and tracking **[RA-2]**

Exhibit 3-a: Petitioner's September 21, 2007 letter to Mr. Suter, with express mail receipt and tracking **[RA-46]**

Exhibit 3-b: September 19, 2007 letter from Jeffrey Atkins, Supervisory Case Analyst **[RA-52]**

Exhibit 1-b to petitioner's October 9, 2007 motion for clarification & recall/vacatur

Docket for 07-228

No. 07-228

Title:	Elena Ruth Sassower, Petitioner v. United States
Docketed:	August 21, 2007
Lower Ct:	District of Columbia Court of Appeals
Case Nos:	(04-CM-760, 04-CO-1600)
Decision Date:	December 20, 2006
Rehearing Denied:	March 20, 2007

Date	Proceedings and Orders
May 21 2007	Application (06A1105) to extend the time to file a petition for a writ of certiorari from June 18, 2007 to August 17, 2007, submitted to The Chief Justice.
May 30 2007	Application (06A1105) granted by The Chief Justice extending the time to file until August 17, 2007.

Aug 7 2007	Application (07A106) to file a petition for a writ of certiorari in excess of page limits, submitted to The Chief Justice.
Aug 9 2007	Application (07A106) to file petition for a writ of certiorari in excess of age limits granted by The Chief Justice. The petition for a writ of certiorari may not exceed 36 pages.
Aug 17 2007	Petition for a writ of certiorari filed. (Response due September 20, 2007)
Aug 27 2007	Waiver of right of respondent United States to respond filed.
Aug 29 2007	DISTRIBUTED for Conference of September 24, 2007.
Oct 1 2007	Petition DENIED.

Exhibit 3-a to petitioner's October 9, 2007 motion for clarification & recall/vacatur

Petitioner's September 21, 2007 letter to Clerk William K. Suter

By Express Mail: EB 502217763 US

September 21, 2007

William K. Suter, Clerk
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: Clarification of Practices & Procedures at the U.S. Supreme Court Clerk's Office & Misconduct Complaint against Clerk Office Staff
Elena Ruth Sassower v. United States of America, #07-228

Dear Mr. Suter:

This letter follows up my many phone calls to the Clerk's Office yesterday afternoon, urgently requesting to speak with you or your secretary about the misconduct of Clerk Office staff under your supervision. Notwithstanding the exigency of the situation – with the above-entitled case calendared for court conference on Monday, September 24th – I was told that you do not take phone calls, that I could also not speak with your secretary, that there was no way for me to leave a voice mail message for you, and that the only manner in which I could

communicate with you was by letter.

Although I know from past experience that any letters to you inquiring about the practices and procedures of the Clerk's Office and complaining about the misconduct of its staff are an exercise in futility[1], due process and fundamental decency require that you be afforded an opportunity to address the situation prior to my turning to Chief Justice Roberts, who bears ultimate supervisory **[p.2]** responsibilities over how the United States Supreme Court Clerk's Office operates.

The facts are as follows: Yesterday, at about 1:30 p.m., I called the Clerk's Office to inquire as to the status of my motion to Chief Justice Roberts, as Circuit Justice for the District of Columbia. Such motion asked that he "request", if not order, the United States Solicitor General to file the Government's response to my petition for a writ of certiorari, or, alternatively, that he present the motion to the Associate Justices for their consideration as to whether, individually or collectively, the Court must request the Solicitor General's response. I had express mailed an original and ten copies of the motion to the Clerk's Office on Monday, September 17th, for delivery the following day, September 18th.

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1 These prior unresponded-to letters are posted on CJA's website, www.judgewatch.org. The October 14, 1998 and October 26, 1998 letters to you are accessible *via* the sidebar panel, "Test Cases-Federal (*Mangano*)", in the section pertaining to the U.S. Supreme Court. My March 12, 2004 letter to you is accessible via the sidebar panel "Searching for Champions-Federal" which links to a webpage for "Chief Justice Rehnquist & Associate Justices".

My initial phone call yesterday, September 20th, was directed to Jeffrey Atkins, a case analyst supervisor, who stated that the motion had been returned to me. The sole reason Mr. Atkins gave was that the Court, of its own volition, can request the U.S. Solicitor General to file a response, which is what Mr. Atkins had stated to me on Monday, when I first called him about my intended motion. My reply to Mr. Atkins yesterday was similar to what I had told him three days earlier, namely, that I could not reasonably rely on a busy Court to exercise its *sua sponte* power; that it was my position that the Solicitor General's waiver, in the case at bar, was violative of ethical rules of professional responsibility and of his official duty; and that nothing in the Court's rules, which I had read, precluded me from making a motion for the Court to direct the Solicitor General to file the Government's response to my cert petition.

I then asked Mr. Atkins which of the Court's rules allowed the Clerk's Office to take over for Chief Justice Roberts in deciding my motion by returning it to me. His answer was to tell me to "Have a good day" and disconnect the phone conversation.

Upon calling him back – which I did twice within the next 15 minutes, the second call being shortly before 2:00 p.m. – I got only his voice mail. My voice messages for him asked that he confirm whether – as it seemed – he had hung up on me. I reiterated my request that he identify which Court rules authorized the Clerk's Office to return my motion. Indeed, I also asked which Court rules authorized it to do so without even recording my motion or its return on the case docket, thereby creating a false case history. I asked Mr. Atkins to get back to me soon as possible, as I would otherwise have no choice

but to seek supervisory oversight from his superiors.

By 3:40 p.m., I telephoned the Clerk's Office and requested to speak with your Chief Deputy Clerk, Chris Vasil – your "second in command" – who does take phone calls. Mr. Vasil picked up the phone, but immediately put me "on hold" when I identified myself. I remained "on hold" for over five minutes, before hanging up. At 4:05 p.m., I again phoned Mr. Vasil, but now got his voice mail. My voice message for him summarized the urgency of the situation and requested a return call.

[p. 3] It is now nearly 4:30 p.m., Friday, September 21st, and I have received no return call from either Mr. Atkins or Mr. Vasil about a case that must be removed from Monday's conference calendar, so that the Chief Justice Roberts – as Circuit Justice for the District of Columbia – can first decide my motion for the Solicitor General's response, including my motion's alternative request that he present it to the Associate Justices for their consideration as to whether, individually or collectively, the Court must request the Solicitor General's response.

So that I may protect my rights and those of the public, prejudiced by the actions of the Clerk's Office, please promptly advise, including by fax and/or e-mail, as to:

> (1) whether you approve of the conduct of Mr. Atkins and Mr. Vasil, as hereinabove recited[2];

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[2] Recitations of Mr. Vasil's prior misconduct appears in my October 26, 1998 letter to you (at p. 2) and in my March 12, 2004 letter to you (at p. 5). My March 12, 2004 letter also recites Mr. Atkins' prior misconduct (at pp. 4-6). That being

(2) which Court rules, if any, permit the Clerk's Office to have returned my September 17th motion for the Solicitor General's response to my cert petition[3] – and to have returned it without any record having been made in the Court's docket of either the motion or its return; and

(3) who in the Clerk's Office decided that Chief Justice Roberts should not make his own decision with respect to my motion. Was it Mr. Vasil, Mr. Atkins, yourself, or others, individually or collectively?

Please also advise as to:

(4) the percentage of criminal cases in which the Solicitor General waives the Government's "right to file a response" to cert petitions; and

(5) whether in any of those criminal cases, the petitioners ever made motions to either a single justice or to the Court for the Government's response. If so, please confirm that the Clerk's Office also sent those motions back to the petitioners, and did so without entering them on the case dockets –

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said, it is incumbent upon me to note – and thank – Mr. Atkins for his assistance in connection with my August 7, 2007 motion to add 5-1/2 pages to my cert petition.

[3] In the event, you were not aware of my motion – and no copies of it were made or retained by the Clerk's Office before being sent back to me – it is posted on CJA's website, accessible *via* the sidebar panel "'Disruption of Congress'-The Appeals".

supplying me with the case numbers or names.

[p. 4] Thank you.

Yours for a quality judiciary,
s/
ELENA RUTH SASSOWER
Petitioner *Pro Se*

cc: Chris Vasil, Chief Deputy Clerk
Jeffrey Atkins, Supervisory Case Analyst
Paul D. Clement, United States Solicitor General

Exhibit 3-b to petitioner's October 9, 2007 motion for clarification & recall/vacatur

SUPEME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

September 19, 2007

Elena Ruth Sassower
16 Lake Street
Apartment 2C
White Plains, NY 10603

Re: Elena Ruth Sassower v. United States
No: 07-228

Dear Ms. Sassower:

The motion to request the Solicitor General to file a response received September 19, 2007 is herewith returned. If the Court wishes to see a response to a petition for a writ of certiorari, the Court will request a response on its own volition.

Sincerely,
William K. Suter, Clerk
By: s/
Jeffrey Atkins
(202) 479-3263

Enclosures
cc: Paul D. Clement

Petitioner's October 9, 2007 letter to Clerk William K. Suter

BY EXPRESS MAIL

October 9, 2007

William K. Suter, Clerk
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: Application/Motion Pursuant to Rule 22.1
Sassower v. United States of America, #07-228

Dear Mr. Suter:

Pursuant to Rule 22.1, the enclosed application/motion is being sent to you for filing and prompt transmittal to Chief Justice Roberts as Circuit Justice for the District of Columbia.

Should you deem the application not in compliance with the Court's Rules, please advise by letter as to the particulars of this non-compliance. Do not, however, return to me the application and its enclosed 10 copies. Rather, because time is of the essence, I request that you transmit them to the Chief Justice, together with my enclosed letter to him, so that he may administratively address, as a complaint, your misconduct and that of the Clerk's Office which is the subject of the application/motion and take such steps as may assure its rightful judicial determination.

Thank you.

Yours for a quality judiciary,
s/
ELENA RUTH SASSOWER
Petitioner *Pro Se*

cc: Supreme Court Justice John G. Roberts
Solicitor General Paul D. Clement

Enclosures

Petitioner's October 9, 2007 letter to Supreme Court Chief Justice John G. Roberts

BY EXPRESS MAIL

October 9, 2007

Chief Justice John G. Roberts
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: Misconduct Complaint against U.S. Supreme Court Clerk William K. Suter & the Clerks' Office

Dear Chief Justice Roberts:

This letter is a formal complaint of misconduct against U.S. Supreme Court Clerk William K. Suter and the Clerk's Office. It is written to you in your administrative capacity, as you bear ultimate supervisory oversight responsibilities over Mr. Suter and how the Clerk's Office operates.

The facts constituting this complaint are set forth in the enclosed application/motion addressed to you as Circuit Justice in case number #07-228, *Elena Ruth Sassower v. United States of America*. In violation of Rule 22.1, Mr. Suter has refused to file the application/motion and transmit it to you so that you can adjudicate his misconduct and that of the Clerk's Office which has prejudiced and sabotaged my meritorious petition for a writ of certiorari to the District of Columbia Court of Appeals.

In the interest of judicial economy, I respectfully refer you to that application/motion, which Mr. Suter is forwarding to you, with this letter, as I requested him to do by separate letter to him, a copy of which is attached.

Thank you.

Yours for a quality judiciary,
s/
ELENA RUTH SASSOWER
Petitioner *Pro Se*

cc: Supreme Court Clerk William K. Suter
Solicitor General Paul D. Clement

Enclosures

Petitioner's October 26, 2007 letter to Chief Justice Roberts

BY PRIORITY MAIL
CERTIFIED MAIL/RRR: 7003-1680-0001-8617-5151

October 26, 2007

Chief Justice John G. Roberts
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: Misconduct Complaint against U.S. Supreme Court Clerk William K. Suter & His Staff: Case #07-228: *Elena Ruth Sassower v. United States of America*

Dear Chief Justice Roberts:

This letter is a formal complaint of misconduct against U.S. Supreme Court Clerk William K. Suter and his staff. It is written to you in your administrative capacity, as you bear ultimate supervisory oversight responsibilities over Mr. Suter and how the Supreme Court Clerk's Office operates.

The facts constituting this complaint – as of Tuesday, October 9, 2007 – were set forth in an October 9th motion addressed to you as Circuit Justice in case number #07-228, *Elena Ruth Sassower v. United States of America*. An original and ten copies were express mailed to Mr. Suter on that date, with a letter addressed to him, requesting

that if he did not file and transmit the motion to you, pursuant to Rule 22.1, he transmit it to you as a complaint against him and the Clerk's Office so that you could handle it administratively. In that event, I enclosed a separate explanatory letter for you.

According to U.S. postal service records, the express mail package was delivered to the Court at 10:48 a.m. on Wednesday, October 10th. However, as of today, October 26th, the Clerk's Office has not docketed the motion, I have received nothing from the Clerk's Office by mail, fax, or e-mail, and my telephone inquiries to Mr. Suter's staff as to the status of the motion and its alternative administrative complaint to you have been ignored and rebuffed, leaving me wholly "in the dark". The particulars of this further misconduct, spanning from October 12th to date, are set forth by my accompanying October 26th letter to Mr. Suter. A copy is enclosed, as is a copy of my prior October 9th letter to Mr. Suter, its attached October 9th letter-complaint to you, and my October 9th motion.

[p. 2] All these documents are reproduced in the appendix of my petition for rehearing of the Court's October 1, 2007 order denying my petition for a writ of certiorari. The first section of my petition for rehearing pertains to the official misconduct of Mr. Suter and his staff, entitling me to recall/vacatur of the October 1, 2007 order. Such would render the petition for rehearing moot.

In the event Mr. Suter and his staff refuse to file the petition for rehearing and distribute it to you and the other Justices for disposition, a copy is also enclosed in support of this complaint.

Thank you.

Yours for a quality judiciary,
s/
ELENA RUTH SASSOWER
Petitioner *Pro Se*

cc: Supreme Court Clerk William K. Suter
Solicitor General Paul D. Clement

Enclosures

Petitioner's October 26, 2007 letter to Clerk Suter

DELIVERY CONFIRMATION:
0300-1290-0006-9069-4874

October 26, 2007

William K. Suter, Clerk
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: Misconduct Complaint against You and the Clerk's Office, Now Further Embodied in Petition for Rehearing: *Elena Ruth Sassower v. United States of America*, #07-228

Dear Mr. Suter:

Enclosed is a copy of my letter of today's date to the Chief Justice, constituting my complaint against you and your staff for official misconduct. Such misconduct, particularized by my October 9, 2007 motion, is now supplemented by your misconduct in handling that motion. This includes your wilful failure – and that of your staff – to advise me as to the status of the motion and of its alternative accompanying October 9th letter-complaint for the Chief Justice, with knowledge that I would thereby be delayed and impeded in protecting my rights by myself sending a complaint to the Chief Justice and/or filing a petition for rehearing, due today, October 26th. I have now done both.

If you have a legal basis for failing to file and "promptly" transmit to the Chief Justice my October 9th motion, as is your duty pursuant to Rule 22.1, please set it forth. Please further identify the dates on which you received and reviewed the motion and why you took no steps to ensure that I would have expeditious notice of its disposition. As with my September 17th motion, your computerized docket for case #07-228 contains no entry of receipt and disposition of the October 9th motion.

As for the particulars of your staff's misconduct in connection with the motion, they are as follows:

[p.2] On Friday, October 12th, I called the Clerk's Office at 12:45 p.m. to ascertain the status of my October 9th motion. According to U.S. postal service records[1], it was delivered to the Court two days earlier, at 10:48 a.m. on Wednesday, October 10th. I spoke with Kendra Morgan, an assistant, who told me she would verify the status with your secretary, Lynn Holtz, and get back to me. Three hours later, at 3:45 p.m., having not heard back from Ms. Morgan, I left a voice mail message for her. At 4:00 p.m., I followed this with a voice mail message for supervisory case analyst Jeff Atkins.

At 4:25 p.m., I again called Ms. Morgan, who I now reached. She told me that I would have to speak with Mr. Atkins. I responded that I had already left him a voice mail, but had not yet received a return call. I asked her to request Mr. Atkins to call me as soon as possible. I thereupon left a second voice mail message for Mr. Atkins, imploring that he call me

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1 Copy attached.

back so that I might be guided appropriately in making my weekend plans. I received no return call.

On Monday, October 15th, I left a voice mail message for Ms. Morgan at 10:00 a.m., a voice mail message for Mr. Atkins at 11:30 a.m., a voice mail message for Ms. Holtz at 12:00 p.m., and another voice mail message for Mr. Atkins at 3:30 p.m. I received no return calls.

At 4:25 p.m., I telephoned the Court's Office of Legal Counsel and spoke with Christie Cherry, a paralegal assistant, requesting information about procedures for forwarding a complaint against you and your staff to the Chief Justice. After explaining to her the relevant particulars, Ms. Cherry stated that since the hour was late, she would get back to me the next day.

On Tuesday, October 16th, I received a phone call at about 10:00 a.m. from Eric Fossum, a case analyst in the Clerk's Office. Mr. Fossum told me that he had been asked to call me. However, he knew nothing about the case, other than that my petition for a writ of certiorari had been denied on October 1st. After providing him with pertinent background[2], Mr. Fossum put me "on hold", following which he told me that the Clerk's Office had not received the motion "at this point". I replied that this was quite a surprise not only because the U.S. postal service

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[2] Mr. Fossum's responses to what I told him included his emphatically telling me that the Court's rules "no longer specifically allow" for extensions of time to file petitions for rehearing from the denial of cert and that there were "absolutely no extensions". However, he would not identify the Court rules he was talking about, nor discuss with me Rule 30.3.

records showed delivery to the Court six days earlier, but because no one at the Clerk's Office had responded to my many voice mail messages inquiring about the motion by telling me that the motion had not been received.

Mr. Fossum did not say who he had consulted when he put me "on hold" and thereupon told me that the motion had not been received "at this point". He refused to answer my question as to who had asked him to call me and hurried off the phone upon my questioning him, stating that **[p. 3]** he was not the case analyst for this case. At 10:20 a.m., I phoned Mr. Atkins, but got only his voice mail, on which I left a message. At 10:25 a.m., I phoned Ms. Holtz, but likewise only got her voice mail, on which I left a message. At 10:54 a.m., I left a voice mail message for merits clerk Denise McNerny. I also began making calls to the mailroom to ascertain whether it had a record of the motion's receipt and delivery to the Clerk's Office.

At 12:30 p.m., I phoned the Office of Legal Counsel and left a voice mail message for Ms. Cherry. She called me back an hour later, at which time she stated that she had been told by the Clerk's Office that it had now received my motion and that it was "being processed today". However, Ms. Cherry would give me no further information about it, including who was doing the "processing". I implored her to relay to whoever it was that I wished to be informed, as soon as possible, whether it was going to be filed and transmitted to the Chief Justice or, alternatively, given to him as an administrative complaint, as requested in my accompanying October 9th letter to you. Ms. Cherry also told me that there are "no formal procedures" for a complaint against

you, but that I could mail a complaint directly to the Chief Justice, at the courthouse.

At 2:55 p.m., I phoned Mr. Atkins, but only got his voice mail. My voice mail message for him requested to know who was "processing" my motion and asked that I be informed, as soon as possible, as to the outcome. I thereupon called Ms. Holtz. This time, she answered the phone. However, she refused to speak with me, stating that Mr. Fossum had already spoken with me. I explained that Mr. Fossum had not known anything about the case and that although he had told me that my motion had not been received "at this point", I had since learned that it had been received and was being "processed today". Ms. Holtz hung up on me as I asked who was handling the "processing". Upon promptly calling her back, I got only her voice mail, on which I left a message, reiterating my requests to know who was "processing" my motion and to be informed as soon as possible of its outcome. I received no return call.

On Wednesday, October 17th, I phoned Sandy Spagnolo, the case analyst for this case. It was then about 1:42 p.m. – and I got her voice mail, on which I left a message inquiring as to the outcome of the "processing" of my motion. By 4:00 p.m., having received no return call, I telephoned Mr. Atkins. I left a similar message on his voice mail, requesting to know the outcome of the "processing". I received no return call.

On Monday, October 22nd, having received no return calls and no postal return of my motion or any written communication from the Clerk's Office, I phoned Mr. Atkins. It was then 4:12 p.m. and I got his voice mail. Again, I left a further message

inquiring as to the status of my motion. I thereupon phoned the Clerk's Office, requesting to know the status – and was routed to Ms. Spagnolo, on whose voice mail I left a message. I received no return calls.

On Wednesday, October 24th, having still received no return calls, no postal return of my motion, and no written communication from the Clerk's Office, I again left voice messages for **[p. 4]** Ms. Spagnolo, at 3:40 p.m., and for Mr. Atkins, at 4:40 p.m., requesting a return call as to the status of the motion, as well as other information needed for finalizing my petition for rehearing. I received no return calls – nor any written communications from the Clerk's Office.

The foregoing record of misconduct by you and staff under your direction is now embodied in my petition for rehearing. Enclosed are the required 40 copies, together with the required certificate of its word count, certificate of service, and $200 check.

Yours for a quality judiciary,
s/
ELENA RUTH SASSOWER
Petitioner *Pro Se*

cc: Chief Justice John G. Roberts
Solicitor General Paul D. Clement

Enclosures